that these were not in accordance with the custom and usage of banks charging interests in similar cases.

Counsel for the plaintiff referred to the bank statements exhibited in the affidavit of the acting manager of the plaintiff bank which show debits of $192.17 at the end of February, $174.20 at the end of March and $184.58 at the end of April being interests charged, and payments into the account in April totalling $1,000, resulting in the debit balance of $18,023.84 as at the end of April, in which sum he asked for judgment for the plaintiff with interest thereon at the rates stated in the Statement of Claim. I allow the appeal and grant leave to the plaintiff to sign final judgment in the sum of $18,023.84 being balance due as on 30 April 1973, with interest thereon at the rate of 12% from 1 May 1973 to the date of this order and at the rate of 6% thereafter until date of realisation.

Appeal allowed.

Solicitors: *Yeap & Yeap; Gibb & Co.*

RE WAN KEE CHEONG, DECD.

[O.C.J. (Wan Hamzah J.) June 21, 1974]
[Ipoh — Probate Suite No. 1 of 1972]

Wills Ordinance, 1959, ss. 12 and 16 — Revocation of will by marriage — Revival of will — Whether material that testator knew that will had been revoked.

In this case the testator had made his will on August 8, 1952. He, subsequently married the third defendant. After the said marriage, he made codicils to the will and after making certain alterations in the legacies, he said, "In all other respects I confirm my said will". The question which arose was whether the will and the two codicils could be admitted to probate.

Held: in this case it was clear that the deceased intended that his will would be operative and it was immaterial whether he knew that the will had been revoked by his marriage. The will had been revived and probate should be granted in respect of the will and the two codicils.

PROBATE SUIT.

Philip Leong for the plaintiffs.

N. T. Rajah for the first defendant.

W. S. W. Davidson for the second and third defendants.

M. Sivalingam for the first intervener.

G. Moganasundram for the second intervener.

F. C. Arulanandom for the third intervener.

Wan Hamzah J.: There can be no doubt that the intention of the deceased, Wan Kee Cheong, after his marriage with the third defendant was that his Will dated 8 August 1952 should have effect subject to certain modifications because in the codicil of 15 October 1964 he referred to his Will "which Will bears the date *i.e.* 8th day of August 1952" and directed "... my Will shall be construed and have effect as if the names of the said Wan Seck Choon (f) and Wan Choi Koon (f) and Wan Kah Chan alias Wan Kar Chan had been inserted thereon throughout in the place of the name of the said Cheong Sau Yoong (f) deceased as Executors and Trustees." and stated "And in all other respects I confirm my Will...", and in the codicil of 28 March 1972 he referred to his Will "which Will bears dated August, 1952" and also stated "In all other respects I confirm my said Will."

On behalf of the first and third defendants it was contended that for the Will to be revived under section 16 of the Wills Ordinance 1959 after it has been revoked under section 12 by the deceased's remarriage, there must be intention on his part to revive it and there cannot be intention to revive unless he knew that the Will had been revoked by his marriage and there is no evidence to show that he knew of the revocation. It is contended it is not sufficient that there was intention that the Will should be operative but there must be intention to revive it. It was pointed out that there was no extrinsic evidence adduced to show surrounding circumstances from which intention to revive can be inferred. It was pointed out that most of the cases cited in support of revival were cases in which the testator had made two or more Wills the later revoking the earlier and therefore there was no question of the testator not knowing that the earlier Will had been revoked when he confirmed it. It was pointed out that in the books of forms and precedents the word "confirm" is used in the forms of codicils for altering, amending or varying a Will, but in the form of codicil for reviving a revoked Will other appropriate words are used, and in the present case the solicitors who had drawn the two codicils had not used the form of codicil appropriate for reviving a Will, thus showing that there was no intention of the testator to revive his Will.

In my opinion the words "intention to revive the same" in section 16(1) of the Wills Ordinance mean and include intention that the Will should have effect. In my opinion where a testator although ignorant of his Will having been revoked by his subsequent marriage, in a properly executed codicil confirms that Will, thereby showing that he intends that the Will shall have effect, this is sufficient to revive the Will under section 16. In my opinion in the present case it is not material whether the deceased knew his Will had been revoked. From the two codicils I find the deceased intended that his Will should be operative, and therefore I hold that the Will has been revived. To hold that the Will has not been revived would be to frustrate the clear intention of the deceased that his Will should be carried out.

As regards the question of fact in this case whether the deceased knew that his Will had been revoked by his subsequent marriage, I am inclined to infer from the facts in this case that the deceased had been so advised by the two solicitors who helped him to execute the respective codicils.

I find that the gifts in the two codicils are not inconsistent with one another and they can stand together. Although the codicil of 28 March 1972 is described therein as a first codicil, apparently this is a mere misdescription and there is nothing else to show intention that the codicil of 15 October 1964 should not have effect.

I therefore decree probate in respect of the Will and the two codicils.

Order accordingly.

Solicitors: *Cheang Lee & Ong; Maxwell, Kenion, Cowdy & Jones; Lewis & Co.; Lim Kean Chye & Co.; Yeoh Kian Teik & Co.; Arulanandom & Co.*